

**UNITED STATES DISTRICT COURT  
DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

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Case No. 17-CV-44-DLH-ARS

**Dr. Robert J. Roswick,**

Plaintiff,

v.

**DECLARATION OF J. ASHWIN  
MADIA IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
RECUSAL OF JUDGE HOVLAND**

**Mid Dakota Clinic, P.C.; Board of Directors,  
Mid Dakota Clinic, P.C.; Dr. Robert Tanous;  
Dr. Shelly Seifert; Dr. Andy Hetland;  
Dr. John Botsford; Dr. Vijay Rao; Dr. Brian  
Hebert; and Marvin Lein.**

Defendants.

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**J. ASHWIN MADIA** states as follows:

1. I am Dr. Roswick's lawyer. I submit this declaration in accord with 28 U.S.C. § 1746 in support of Plaintiff's Motion for Recusal of Judge Hovland. I also represented Dr. Bharadwaj in a related case, Bharadwaj v. Mid Dakota Clinic et al.<sup>1</sup>, that Judge Hovland dismissed on summary judgment on June 13, 2018.
2. Scott Porsborg is the lead attorney for Defendants. He also served as the lead attorney for Defendants in the Bharadwaj case.

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<sup>1</sup> 16-CV-262.

3. I recently learned that Judge Hovland was Scott Porsborg's law partner until he assumed the bench in November 2002. Judge Hovland did not disclose at any time that he was Porsborg's former law partner – either in this matter or the Bharadwaj case.
4. After learning of their partnership, I investigated their relationship further through public filings, as I cannot depose Porsborg and haven't had the opportunity to *voir dire* the Court.
5. I discovered that Judge Hovland and Porsborg frequently teamed on cases together in private practice.
6. I also learned that Judge Hovland represented Mid Dakota Clinic – the central defendant in this case and the Bharadwaj case – while in private practice. Judge Hovland did not disclose at any time that he previously represented Mid Dakota Clinic – either in this matter or the Bharadwaj case.
7. I was surprised that Judge Hovland's Order Granting Defendants' Motion for Summary Judgment against Dr. Bharadwaj didn't cite, mention, or address a single exhibit of the more than 250 that Dr. Bharadwaj submitted in opposition, particularly given that the Order cited exhibits submitted by Porsborg on behalf of Mid Dakota Clinic, the moving party, 85 times. I was further surprised that Judge Hovland's Order didn't address any of the disputed facts raised by Dr. Bharadwaj, his actual arguments, exhibits, or in many cases, his actual claims. In my experience, that is highly unusual in federal court.
8. I investigated further and discovered that Judge Hovland's Order almost entirely tracked Porsborg's Memorandum in Support of Summary Judgement – *verbatim*.

- a. I created Exhibit 1 by highlighting the portions of Judge Hovland's Order that were directly and *verbatim* copied from Porsborg's brief. I only highlighted language that was exactly copied.
  - b. I created Exhibit 2 by redacting the portions of Judge Hovland's Order that were directly and *verbatim* copied from Porsborg's brief. The exhibit illustrates that Judge Hovland apparently almost entirely copied and pasted the moving party's statement of facts into his Order Granting Summary Judgment, and further copied and pasted almost entirely the moving party's Argument into his Order's Analysis.
  - c. I created Exhibit 3 by simply taking Exhibit 2 and minimizing the size of all the pages so the entire exhibit could fit on one page to quickly illustrate how much of Judge Hovland's order was copied directly from Porsborg's brief.
9. Nowhere does Judge Hovland's Order consider – much less address – any of the facts, exhibits, or arguments raised by Dr. Bharadwaj. Rule 56, of course, mandates that the Court take all facts and inferences in the light most favorable to the non-moving party. Exhibit 2 documents that Judge Hovland almost completely simply copied and pasted the moving party's statement of facts into his Order, without acknowledging, considering, or addressing the facts or exhibits submitted by Dr. Bharadwaj.
10. I promptly filed this motion after learning of Judge Hovland's prior relationships with Porsborg and Mid Dakota Clinic and conducting my investigation.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Date: July 12, 2018

s/J. Ashwin Madia

J. Ashwin Madia